



MICHIGAN HOUSING COUNCIL

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Michigan Housing Council Statement

Before the

**Michigan State Housing Development Authority
Regarding the
Draft Michigan Qualified Allocation Plan 2008-2009**

September 28, 2007

Good Afternoon. My name is Scott Larry. I am the President of the Michigan Housing Council (MHC), and I wish to thank the Michigan State Housing Development Authority (MSHDA) for the opportunity to offer public testimony regarding the draft Michigan Qualified Allocation Plan for 2008-2009 (QAP).

The Michigan Housing Council is one of the oldest statewide associations of affordable housing professionals in the United States. We represent for profit and non-profit owners, developers, managers, general contractors and subcontractors, architects, engineers, attorneys, investors, financial groups, insurers, accountants, market analysts, tax credit syndicators, and other consultants, non-profits and businesses involved with Michigan's affordable housing industry. Our members live and work in nearly every part of the state of Michigan and represent every facet of the affordable housing industry.

On July 17, 2007, we wrote to MSHDA Executive Director Michael DeVos expressing our concern that it was "unlikely that the initial draft of the QAP would

be a unifying document.” Sadly, we were correct. The draft QAP is not a consensus building document. The draft QAP needlessly pits community against community, city resident against city resident, homeless advocates against affordable housing advocates, and for-profit developers against non-profit developers. The draft QAP undermines the very relationships that former MSHDA Executive Director Terry DuVernay and others believed to be important and that they worked to develop and maintain during the past 25 years. And for the first time, the draft QAP uses “wedge issues” as a substitute for informed debate on important public policy issues. It is deeply disappointing that a public agency like MSHDA believes such tactics are necessary.

Make no mistake about it. The draft QAP is not, as MSHDA suggests, a “re-write”. The draft QAP is a radical departure from the current QAP approved by MSHDA and Governor Granholm just three years ago. In fact, the draft QAP is a radical departure from any QAP adopted by MSHDA during the past 20 years prompting Red Capital - a national investor in tax credit properties - to caution MSHDA “not to change the (LIHTC) program so radically so as to endanger the supply of private capital that has consistently supported the development, rehabilitation, and preservation of housing in the state.”¹ This type of concern by a national investor regarding a Michigan QAP in any form is unprecedented.

¹ Letter dated September 4, 2007, from Bruce Sorota, Director, Red Capital Group to Mary Levine, Acting Director of Legal Affairs, Michigan State Housing Development Authority.

Further, our concerns are not about an inability to change or change agents or new policy initiatives targeted to the homeless or extremely low income households as some have suggested in effort to persuade others from taking a closer look the draft QAP and understanding its true implications for Michigan and the Michigan economy. In fact, with time, discussion and the allocation of additional resources, many of the initiatives in the draft QAP could enjoy wide support in the affordable housing community.

With few exceptions, those who attended the MSHDA listening sessions asked for consistency in order to nurture the development of affordable housing while bringing good economic news to Michigan communities. MSHDA chose not listen to those who attended its informational hearings. MSHDA chose instead to listen to its own voice and responded with a draft QAP that is inconsistent and contemplates too much change with too little time or information to adapt current development proposals or to develop new proposals in time for the proposed December 27th funding round. Given Michigan's struggling economy and the difficulty of attracting any investment to our state, the draft QAP sends the wrong message at the wrong time.

In our opinion, the draft QAP should not be approved by MSHDA or Governor Granholm without significant changes. And most importantly, ongoing discussions regarding the draft QAP should not be used to delay an October tax credit funding round or the economic benefits from an October funding round -

which by some accounts could generate as much as \$400,000,000 for a significant part of the Michigan economy.

Holding an October funding round hostage to the approval of this QAP with its unfunded public mandates is by default a decision to delay the economic activity associated with these developments for a year or more. Holding an October funding round hostage to the approval of the next QAP is by default also a decision to deny Michigan projects an opportunity to compete for Affordable Housing Program Funds of over \$4 million from the Federal Home Loan Bank of Indianapolis, as well as funds from other Federal Home Loan Banks. And the result will be to push those resources to other states and other areas serviced by the member banks. There are plenty of developments in the pipeline. And if we are to maximize and capture the true economic value of the LIHTC program at a time when our state needs it the most, MSHDA must immediately schedule an October 15th tax credit round under the current QAP that has already approved by MSHDA and Governor Granholm.

A recent editorial in the *Lansing State Journal* said it best.² "Michigan is in no position to let jobs slip away." We agree.

We recognize that as the state allocating agency MSHDA plays a central role in the preparation of a plan to replace the 2005-2006 QAP. But today – over

² Editorial, *The Lansing State Journal*, July 12, 2007.

halfway through the public comment period required by federal law – we are unable to assess the full impact of the proposed plan since critical information from MSHDA regarding the draft QAP has trickled out in piecemeal fashion or is simply unavailable. For example, on July 16, 2007, MSHDA staff released the first draft QAP after a MSHDA Board meeting. On August 24, 2007, MSHDA staff released a second draft of the QAP on the MSHDA website. The second draft differed significantly from the first draft but MSHDA provided no explanation about what changes were made or why they were made. On September 5, 2007, supplemental information containing a new rural definition and a list of cities eligible for the PDC holdback appeared on the MSHDA website. On September 12, 2007, still more information regarding the QAP appeared on the MSHDA website. And just three days ago, revised LIHTC policy bulletins appeared on the MSHDA website.

What we do know about the draft QAP, however, raises significant concerns and demonstrates the need for a thorough review before MSHDA and Governor Granholm are asked to consider the draft QAP.

- **The draft QAP ignores the rule of law.**

The draft QAP is yet another example of a MSHDA policy initiative where the rule of law has been openly ignored. The draft QAP fails to demonstrate the need for many of its stated priorities as required by federal law. The draft QAP creates new allocation categories that minimize, if not render meaningless, the legislative mandates for the allocation of credit as enacted by the Michigan legislature. The draft QAP purports to exempt MSHDA, a public and corporate body of the

State of Michigan, from its responsibilities under the Freedom of Information Act.

Most significantly, however, the draft QAP and MSHDA's public hearing process undeniably violate federal law and MSHDA's own procedures for public input established during the past 20 years of administering the LIHTC program. Consequently, it is likely that any QAP adopted by MSHDA as a result of the current process will be challenged in court, and if challenged, the draft QAP is likely to be ruled invalid for MSHDA's own failure to obey the rule of law.

Section 42 of the Internal Revenue Code provides great latitude for state agencies administering the LIHTC program. However, the Code also provides certain minimum standards for any QAP. One such standard is that a QAP must contain certain selection criteria mandated by the Code [See Section 42(m) (1)(B) and (C)]. Even MSHDA's draft WAP recognizes that these criteria must be part of the QAP [See Section 1A of the draft QAP.]. For whatever reason, MSHDA ignored federal law and chose not to include the selection criteria in the draft QAP for public comment. Rather, the federally required selection criteria are contained in a separate document that MSHDA steadfastly refused to release as part of the 30 day public comment period. As a result, the draft QAP before us is not a QAP at all because it fails to meet the minimum requirements for a QAP as dictated by federal law. And the public hearing process used by MSHDA is invalid because the information required by federal law to be part of a QAP was not, is not, and has not been available to the public at any point during the public comment period.

Those who participated in the public review process repeatedly expressed their concerns that the QAP was incomplete making the plan difficult if not impossible to evaluate. But once again, MSHDA chose to listen to its own voice, to withhold the selection criteria from public review, and to violate its fiduciary responsibilities under state and federal law by not releasing the selection criteria as part of the public comment period.

There can be little doubt that MSHDA must conduct another 30 public comment period on the draft QAP and the selection criteria as required by federal law further underscoring the need for an October funding round under the existing QAP.

- **The draft QAP conflicts with Governor Granholm's stated objective to use public funds to spur the Michigan economy and**

provides no meaningful support to important urban initiatives like Cities of Promise.

Earlier, we discussed our concerns that the draft QAP will push tax credit investors and scarce federal resources to other states while compounding the problems faced by the Michigan economy. But as MSHDA releases more and more details about the draft QAP, it is becoming increasingly clear that the proposed plan is inconsistent and flawed.

For example, in an effort to fund the Governor's Cities of Promise initiative, MSHDA created a new rural definition. Under the new definition, the City of Muskegon Heights is now a rural community even though it is landlocked between two urban communities - Muskegon and Norton Shores as shown in the attached map from Rural Development.

Unfortunately, the MSHDA Act disqualifies Muskegon Heights from consideration under the rural set aside of the tax credit program. And as a result, Muskegon Heights only qualifies for funding under the Special Needs set aside of the draft QAP. The same is true for another City of Promise - Benton Harbor.

Other Cities of Promise are crowded into the PDC holdback and have little or no expectation of receiving an award of credit to create badly needed affordable housing and to spur local economic development - unless, course, these cities wish to join Muskegon Heights and Benton Harbor and compete for special needs projects.

- **The draft QAP ignores national trends and market realities eliminating incentives for the preservation of affordable housing.**

According to a recent survey by the National Housing Trust, 46 states - including Michigan - provide preservation incentives in their QAPs. And all of the states in the Great Lakes region - including Michigan - dedicate part of their annual credit allocation to the preservation of affordable housing.

MSHDA now stands in isolation with its decision to eliminate preservation incentives from a QAP. And while MSHDA has not told us if there will be point incentives for preservation projects now or in the future, it is unlikely that such incentives will be meaningful given that other priorities in the draft QAP with dedicated allocations of credit severely restrict the amount of credit available to projects in general categories like preservation.

As a result, MSHDA is placing thousands of assisted units in jeopardy of being lost to the conventional market and valuable Section 8 subsidies from the federal government are in jeopardy of being reprogrammed to other states. And investors have one more reason not to invest in Michigan.

- **The draft QAP increases production costs of affordable housing in Michigan.**

In a June 2007 interview with *Affordable Housing Finance*³, MSHDA Executive Director Michael DeVos identified rising housing costs as one of the primary challenges facing low-income Michigan households. We agree.

Yet, despite this concern, the draft QAP creates additional costs and increases the rent burden on low-income consumers through unfunded public mandates including prevailing wage, local workforce requirements, guaranteed minimum health care benefits, and additional tax credit application and compliance fees for MSHDA.

The draft QAP begs the questions whether or not the benefits associated with such mandates are justified by their cost, or whether or not such mandates "provide quality employment and reduce poverty rates in Michigan towns and cities" as suggested by the draft QAP. We leave the resolution of such questions for others to debate and to determine if MSHDA has any real data that would justify the inclusion of some or all these mandates in a final QAP for the first time in the history of LIHTC program in Michigan.

What is clear, however, is that the additional costs associated with these mandates will increase the bottom line and that the additional costs will be passed on to low-income consumers in the form of higher rents. It is equally clear that it will be the responsibility of the low-income tenant - or a government or private agency where rental subsidy payments have been provided - to shoulder the additional burden of higher rents.

- **The draft QAP invests in financially risky projects that will deter investment in Michigan projects.**

In a June 2007 interview with *Affordable Housing Finance*⁴, MSHDA Executive Director Michael DeVos stated that "the biggest challenge is

³ State Housing Agency Leadership Forum, *Affordable Housing Finance*, June 2007.

⁴ State Housing Agency Leadership Forum, *Affordable Housing Finance*, June 2007.

the lack of significant subsidy to develop rental units affordable to very low income households 30-50 percent of area median income)." We agree.

Yet, despite the recognized lack of subsidy to assist very low income households, the draft QAP doubles the current tax credit allocation to rental developments for very low income tenants. The draft QAP also allocates nearly \$1.5 million to assist affordable assisted living developments models even though such developments cannot be sustained without Medicaid waivers or other public subsidies.

MHC recognizes and supports helping those most in need. We understand, however, that without additional public resources like Medicaid waivers or project-based vouchers or even the unfunded Housing and Community Development Fund, there are practical limits on how deeply LIHTC units may be targeted or the kind of services to be provided. In fact, a recent study⁵ by the National Association of Homebuilders (NAHB) suggests that current LIHTC developments are under financial distress due to a prolonged period of stagnant income limits and rents. The NAHB study also states that "property owners, syndicators, or HFAs will need to find additional subsidies for projects, or risk losing them from the affordable housing stock. Possible sources of additional subsidies are finite." Unfortunately, we have also seen that the limited public resources for services and operations are not without risk and – if available - are often short-term commitments when compared to the financial commitment of a 30 or 35 year mortgage.

Incentives to assist very low income households and tenants with special needs are not new to the Michigan QAP. Such incentives have been incorporated into nearly every QAP for the last seven to ten years. In fact, 2005 survey⁶ of state tax credit agencies conducted by Enterprise and the Corporation for Supportive Housing identified Michigan as one of 9 states with a credit set aside for supportive housing. Yet, MSHDA has no data to confirm the impact these units have had or to confirm that the required services are reaching the tenants.

Prior to any increase in the special needs holdback or new incentives for affordable assisted living developments, we believe that tangible, long term financial commitments to fund services must be identified by MSHDA and that MSHDA must undertake an independent third party

⁵ HUD's New Income Estimates Endanger Viability of Affordable Rentals, National Association of Home Builders, 2007.

⁶ Using the Housing Credit for Supportive Housing, An Assessment of 2005 State Policies conducted by Enterprise and the Corporation for Supportive Housing.

review to evaluate these units and determine what lessons can be learned from the supportive housing units that have already been placed in service.

We would like to conclude our remarks by reiterating our earlier comments. Tax credit investors have a choice. They can choose to invest in Michigan or not. MSHDA's decision to eliminate preservation incentives, to promote financially risky projects and to invest in unproven strategies to deliver affordable housing will make it more difficult to attract investment capital to Michigan tax credit projects and give investors one more reason not to invest in Michigan. Given Michigan's struggling economy and the difficulty of attracting any investment to our state, the draft QAP sends the wrong message at the wrong time.

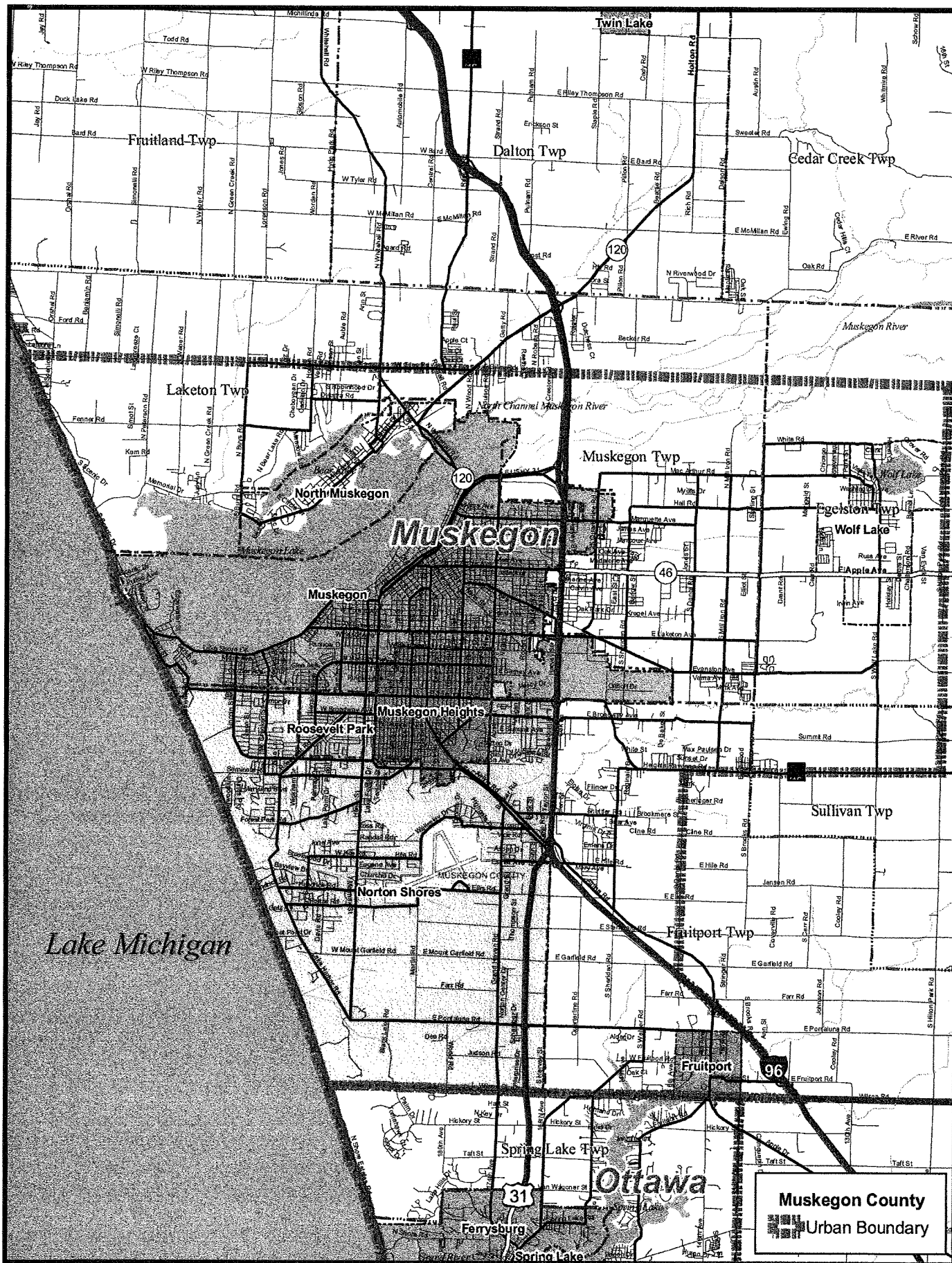
And most importantly ongoing discussions regarding the draft QAP should not be used to delay an October funding round and the economic benefits of the LIHTC program for a significant part of the Michigan economy. Too much time has been lost. And given the need to reopen the public hearing process and allow public comment on the selection criteria as required by federal law - too much time will pass before a new QAP can be approved.

In our opinion, MSHDA must immediately schedule an October tax credit round under the current QAP.

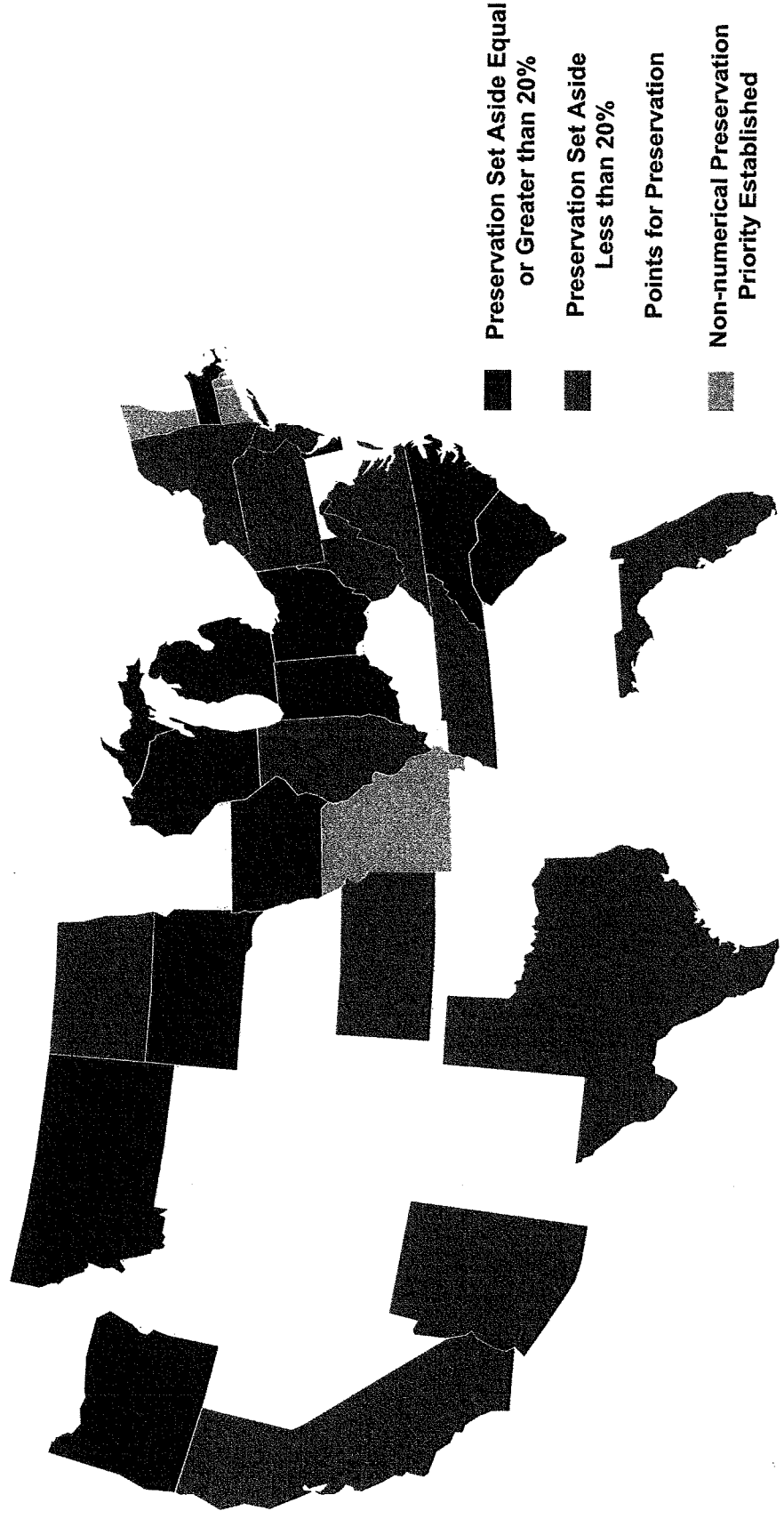
Lastly, we are encouraged that the MSHDA Board will conduct a hearing in Detroit regarding the draft QAP. It is vital that the Board understand what is being proposed and its implications for Michigan and the Michigan economy. We

would also hope that in the spirit of fairness that the MSHDA Board will also travel to other communities in the state like Benton Harbor or Muskegon Heights that are frozen out of the LIHTC program under the current QAP. And we would hope that the MSHDA board would visit the rural areas of Michigan where there is little hope of LIHTC funding in these areas because of the large set asides for other parts of Michigan and other priorities.

Thank you.



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